

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: ARBITRATION OF THE :
INTERCONNECTION AGREEMENT : DOCKET NO. **3437**
BETWEEN GLOBAL NAPS **AND** :
VERIZON-RHODE ISLAND

ARBITRATION DECISION

On June 3, 2002, Global NAPs (“GNAPs”) filed with the Rhode Island Public Utilities Commission (“Commission”) a petition for arbitration of an Interconnection Agreement (“ICA”) with Verizon-Rhode Island (“VZ-RI”) pursuant to the Telecommunications Act of **1996** (“Act”), specifically Section 252 of the Act. In its petition, GNAPs identified nine unresolved issues between the parties. The following were the issues raised by GNAPs in their petition:

1. Should either party be required to install more than one point of interconnection (“POI”) per LATA;
2. Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI;
3. Should VZ-RI’s local calling area boundaries be imposed on GNAPs, or may GNAPs broadly define its own calling areas;
4. Can GNAPs assign to its customers NXX codes that are “homed in a central office switch outside of the local calling area in which the customer resides;
5. Is it reasonable for the parties to include language in the agreement that expressly requires the parties to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised;
6. Should two-way trunking be available to GNAPs at GNAPs’ request;

7. Is it appropriate to incorporate by reference other documents, including tariffs, into the agreement instead of fully setting out those provisions in the agreement;
8. Should the ICA require GNAPs to obtain excess liability insurance coverage of \$10 million and require GNAPs to adopt specified policy forms;
9. Should the ICA include language that allows VZ-RI to audit GNAPs' books, records, documents, facilities and systems.

On June 27, 2002, VZ-RI responded to GNAPs' petition and raised these supplemental issues:

1. Should VZ-RI be permitted to collocate at GNAPs' facilities in order to interconnect with GNAPs;
2. Should GNAPs be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decisions, orders, determination or action;
3. Should GNAPs be permitted to insert itself into VZ-RI's network management to prospectively gain access to network elements that have not yet been ordered to be unbundled.

GNAPs' Position

1. Installation of more than one POI per LATA

GNAPs' position is that it should not be required to install more than one POI per LATA. GNAPs argued that state commissions have almost universally ruled that a competitive local exchange carrier ("CLEC) has the option to

designate a single POI in each LATA.¹ GNAPs noted that VZ-RI does not dispute GNAPs' legal right to establish a single POI.²

2. Responsibility for the costs of transporting traffic to a single POI

GNAPs' position is that each party is responsible for the costs of transporting originating traffic to a single POI. GNAPs asserted that the FCC and the New York Public Service Commission ("NYPSC") has ruled that each party is financially responsible for transporting traffic on its network.³ GNAPs opposed VZ-RI's concept of establishing multiple financial points of interconnection where financial responsibility for the traffic would shift to the CLEC.⁴ Also, GNAPs asserted that the cost of transport for VZ-RI's originating calls to a POI outside of VZ-RI's customer's local calling area is de minimis.⁵

¹ GNAPs' petition, pp. 11-13.

² Lundquist's pre-filed testimony, p. 21.

³ GNAPs' petition, pp. 14-15.

⁴ Lundquist's pre-filed testimony, p. 31.

⁵ *Id.*, P. 35.

3. Application of VZ-RI's local calling areas to GNAPs

GNAPs' position is that it should not be constrained from establishing local calling areas that differ from VZ-RI's current local calling areas. GNAPs indicated that it should be able to offer wider calling area options including, for example, the possibility of a LATA-wide local calling service.⁶ According to GNAPs, allowing CLECs to adopt local calling area definitions that differ from VZ-RI's will encourage and stimulate innovation.⁷

4. Assignment of NXX codes to GNAPs' customers homed in a central office outside the local calling area in which the GNAPs' customer physically resides

GNAPs' position is that it should be allowed to assign NXX codes to its customers regardless of the customer's particular physical location. GNAPs argued that advancements in technology allow for NXX codes not to be linked to a particular central office near the customer's actual physical location. This practice is known as virtual NXX ("VNXX"). As a result, GNAPs stated it could offer wire line customers plans that are competitive with those now enjoyed by customers of wireless carriers. In addition, GNAPs compared VNXX to VZ-RI's Foreign Exchange ("FX") service. GNAPs argued that VNXX can become Virtual FX ("VFX") because customers would be able to call outside their local calling area and not pay a toll charge.⁸ GNAPs noted that the NYPSC recently ruled that virtual NXX codes can be established.⁹

5. Express language that requires renegotiation of reciprocal compensation if the current law is revised

⁶ GNAPs' petition, pp. 17-18.

⁷ Lundquist's pre-filed testimony, p. 61.

⁸ Lundquist's pre-filed testimony, pp. 54-55.

⁹ GNAPs' petition, pp. 19-21.

GNAPs recognized that ISP-bound traffic is not subject to reciprocal compensation due to a recent FCC decision. GNAPs requested that in the event that the FCC's order is vacated or reversed during the period of the ICA is in effect, renegotiation of the reciprocal compensation issue be mandatory.¹⁰ In addition, GNAPs opposed VZ-RI's position that bill and keep be utilized for ISP-bound traffic if the FCC's decision is reversed. Instead, GNAPs indicated that a symmetric TELRIC based reciprocal compensation rate should be established.¹¹

6. Availability of Two-way Trunking

GNAPs argued that two-way trunking should be available to it at its own discretion and not by mutual agreement of the parties as proposed by VZ-RI.¹²

7. Incorporation by reference of other documents into the ICA

GNAPs argued that any term or provision, such as a tariff, that affects the parties should be expressly included in the ICA. GNAPs expressed concern that VZ-RI could unilaterally alter the terms of the ICA by modifying tariffs or CLEC handbooks. Accordingly, GNAPs requested that VZ-RI be allowed to cross-reference its tariffs solely for the purpose of utilizing its tariffed rates for UNEs or collocation.¹³

8. Requirement of Excess Liability Insurance Coverage of \$10,000,000 and other policy forms

GNAPs argued that VZ-RI's proposed insurance requirements are excessive and pose a barrier to competition. GNAPs proposed the following insurance requirements: commercial general liability insurance with limits of

¹⁰ GNAPs' petition, pp. 23-24.

¹¹ Lundquist's pre-filed testimony, pp. 100-101.

¹² GNAPs' petition, pp. 24-25.

¹³ *Id.*, pp. 25-27.

\$1,000,000; excess liability insurance of \$1,000,000, worker's compensation insurance of \$1,000,000, and that VZ-RI's proposed automobile insurance requirement not be adopted. In addition, GNAPs indicated that it should be able to substitute an umbrella excess liability policy for the insurance minimum limits previously listed.¹⁴

9. Allowing VZ-RI to audit GNAPs' books, records, documents, facilities and systems

GNAPs opposed VZ-RI's proposed audit requirements because they would give VZ-RI unreasonably broad access to GNAPs' competitively sensitive records. GNAPs argued that if VZ-RI believes that GNAPs has not complied with the ICA, VZ-RI can seek legal relief.¹⁵

VZ-RI's Position

1. Installation of more than one POI per LATA
2. Responsibility for the costs of transporting traffic to a single POI

As to the first and second issue, VZ-RI stated that GNAPs has the option to designate a single POI per LATA but that GNAPs should be financially responsible for the consequences of exercising its option to designate a single POI. VZ-RI argued that granting GNAPs' unfettered discretion to place a single POI would shift costs to VZ-RI. VZ-RI noted that the establishment of a single POI could be costly, especially if every CLEC exercised this option.¹⁶ VZ-RI proposed Virtual Geographically Relevant Interconnection Points ("VGRIP"). As a result, if GNAPs does not establish an interconnection point at a VZ-RI tandem or designated wire center through a collocation arrangement, VZ-RI would

¹⁴ *Id.*, pp. 28-29.

¹⁵ *Id.*, pp. 29-30.

¹⁶ VZ-RI's Response, pp. 9-12.

establish virtual interconnection points (“IP”) at VZ-RI’s end offices. At each virtual IP, the financial responsibility for the transport of the call would shift from VZ-RI to the CLEC, although VZ-RI would maintain physical responsibility for the call until it reaches the CLEC’s POI. GNAPs’ proposal is that financial responsibility for the call would shift from VZ-RI to the CLEC at the single POI, where the CLEC takes physical responsibility for transport of the call. VZ-RI noted that other states such as Ohio, South Carolina, North Carolina, and Florida have adopted proposals similar to VGRIP.¹⁷

VZ-RI noted that the New York and California Commissions have adopted VZ-RI’s language for issue one, requiring GNAPs to interconnect within VZ-RI’s network. Also, VZ-RI noted that the 3rd U.S. Circuit Court of Appeals has indicated that state commissions can consider shifting the costs to CLECs when their decision on locating a POI is more expensive to the Incumbent Local Exchange Carrier (“ILEC”). VZ-RI admitted that the FCC is currently considering VGRIP in a rulemaking docket.¹⁸

3. Application of VZ-RI’s local calling areas to GNAPs

VZ-RI stated that GNAPs has misconstrued VZ-RI’s position. VZ-RI argued that GNAPs is seeking to avoid intraLATA access charges by defining the LATA as a local calling area. VZ-RI stated that GNAPs can offer its own local calling area to its customers but must compensate VZ-RI on the basis of its local calling areas for assessing reciprocal compensation and access charges.¹⁹ According to VZ-RI, to deprive VZ-RI of local toll revenues would undercut VZ-

¹⁷ *Id.*, pp. 12-16.

¹⁸ Peter D’Amico’s pre-filed testimony, pp. 14-15, 18-20.

¹⁹ VZ-RI’s response, pp. 26, 30-32.

RI's ability to provide low prices for basic phone service. *Also*, VZ-RI noted that the New York and California commissions recently ruled in favor of VZ on this issue in their respective arbitrations. In addition, VZ-RI cited decisions from Ohio, Illinois and Texas to support its position.²⁰

4. Assignment of NXX codes to GNAPs' customers homed in a central office outside the local calling area in which the GNAPs' customer physically resides

VZ-RI stated it is not opposed to GNAPs utilizing VNXX. VZ-RI is opposed to having VNXX traffic considered as local calls for purposes of intercarrier compensation. ~~If VNXX calls are treated as local calls then GNAPs~~ would receive reciprocal compensation for interexchange calls and deprive VZ-RI of access charges for toll calls. VZ-RI noted that the Pennsylvania Commission has not allowed VNXX.²¹ In addition, VZ-RI noted that state commissions in Connecticut, Florida, Georgia, Illinois, Maine, Missouri, Ohio, South Carolina, Tennessee, and Texas have held that VNXX calls are not local calls subject to reciprocal compensation. **As** for the NYPSC, VZ-RI explained that New York's requirement that reciprocal compensation be paid on a LATA-wide basis predated the Act.²² *Also*, VZ-RI stated that GNAPs' proposal would reduce toll revenues and exacerbate number shortages.²³ In addition, VZ-RI explained that FX service compensates VZ for toll calls while VNXX used as VFX would not compensate VZ for toll calls. Furthermore, VZ-RI explained that the California

²⁰ Terry Haynes' pre-filed testimony, pp. 7, 9-12.

²¹ VZ-RI's response, pp. 26, 30-32.

²² *Id.*, pp. 33-36.

²³ *Id.*, pp. 36, 39.

commission allowed VNXXs but also decided that GNAPs must pay VZ for the additional transport.²⁴

5. Express language that requires renegotiation of reciprocal compensation if the current law is revised

VZ-RI stated that a “change of law” provision exists in the ICA and there is no need to give special treatment to any change in law affecting ISP traffic. Also, VZ-RI noted that state commissions cannot depart from the FCC’s intercarrier compensation rate regime.²⁵ VZ-RI indicated that the NYPSC has rejected GNAW position on the issue.²⁶

6. Availability of Two-way Trunking

VZ-RI argued that the parties must come to a mutual understanding to establish two-way trunks. VZ-RI indicated that mutual agreement on operational responsibilities and design parameters for two-way trunks is necessary, and that VZ-RI has similar arrangements with other CLECs in Rhode Island.²⁷ Also, VZ-RI indicated that the state commissions of New York and California have adopted VZ’s position on the issue.²⁸

7. Incorporation by reference of other documents into the ICA

VZ-RI argued that a tariff reference may supplement an ICA’s terms but will not alter it with conflicting terms. Also, VZ-RI indicated that GNAPs’ proposed contract terms would freeze current tariff prices instead of allowing updated UNE and collocation prices from going into effect. Furthermore, VZ-RI

²⁴ Haynes’ pre-filed testimony, p. 37.

²⁵ VZ-RI’s response, pp. 48-50.

²⁶ William Munsell’s pre-filed testimony, pp. 8-9.

²⁷ VZ-RI’s response, p. 60.

²⁸ Pete D’Amico’s pre-filed testimony, pp. 29-31.

noted that modifying a tariff is not a unilateral process because GNAPs has the opportunity to protest the tariff before the Commission.²⁹

²⁹ VZ-RI's response, p. 60.

8. Requirement of Excess Liability Insurance Coverage of \$10,000,000 and other policy forms

VZ-RI set forth its proposed insurance requirements: commercial general liability of \$2,000,000; commercial motor vehicle liability insurance of \$2,000,000; excess liability insurance of \$10,000,000; and worker's compensation insurance of \$2,000,000.³⁰ VZ-RI stated that this amount of insurance is appropriate under the FCC's guidelines.³¹ VZ-RI argued that recent CLEC bankruptcies demonstrate the need for insurance coverage. VZ-RI noted that the state commissions of New York, California and Ohio have adopted VZ's position on this issue. Also, VZ-RI explained that VZ has extensive insurance as well. Furthermore, VZ-RI asserted that GNAPs needs significant insurance because VZ-RI's network is much larger and therefore faces much greater risk than GNAPs' network.³²

9. Allowing VZ-RI to audit GNAPs' books, records, documents, facilities and systems

VZ-RI argued that the proposed audit provision would apply equally to both parties, would be applied by an independent certified public accountant, and would only apply to records necessary to determine billing accuracy. VZ-RI maintained that it is inappropriate to resort to litigation to verify a bill, and that GNAPs' opposition to audit rights stems from GNAPs' alleged prior illegal billing scheme.³³ VZ-RI noted that state commissions in New York, California and Ohio have adopted VZ's position on the issue.³⁴

³⁰ *Id.*, p. 78.

³¹ *Id.*, pp. 77-78.

³² Karen Fleming's pre-filed testimony, pp. 3, 7-9.

³³ VZ-RI's response, pp. 82-84.

³⁴ Jonathan Smith's pre-filed testimony, pp. 7-8.

io. Collocation by VZ-RI at GNAPs' facilities:

VZ-RI's position is that GNAPs should allow VZ-RI to collocate. VZ-RI argued that if GNAPs has the sole discretion to offer collocation to VZ-RI then VZ-RI would be financially burdened with delivering its originated traffic from distant points within the LATA to GNAPs' POI. If VZ-RI can collocate at GNAPs' facilities then it could reduce the cost of transporting its originating traffic to GNAPs' single POI in the LATA.³⁵ VZ-RI noted that the state commissions of New York and Ohio agreed with VZ on this issue.³⁶

11. GNAPs' avoidance of the change of the law provision until all appeals of an order are exhausted

VZ-RI opposed GNAPs' proposal to delay any implementation of a change of law until appeals are exhausted even if the change law is not subject to a stay.³⁷

12. GNAPs' involvement in VZ-RI's network management

VZ-RI stated that it has the right to upgrade and maintain its network and to ensure that GNAPs cannot force VZ to unbundle a network element absent a requirement to do so under law. VZ-RI opposed GNAPs' proposal to require VZ-RI to grant GNAPs next generation technology absent a legal requirement. VZ-RI noted that the NYPSC agreed with VZ on this issue.³⁸

GNAPs Rebuttal

1. Issues One through Four

GNAPs indicated that CLECs must operate efficiently to avoid bankruptcy and therefore, VZ-RI's VGRIP is not necessary to make GNAPs be efficient. *Also,*

³⁵ VZ-RI's response, pp. 85-86.

³⁶ Pete D'Amico's pre-filed testimony, p. 48.

³⁷ VZ-RI's response, p. 87.

³⁸ *Id.*, pp. 89-91.

GNAPs stated that legally, VZ-RI is responsible for transport of VZ-RI's originating traffic to GNAPs' POI.³⁹ Also, GNAPs argued that the NYPSC found that GNAPs is entitled to a single POI in a LATA and that VGRIP should be rejected because it is a fundamental change to the existing intercarrier compensation structure.⁴⁰ Additionally, GNAPs maintained that the California Commission ruled in favor of GNAPs on VZ's VGRIP proposal. Furthermore, GNAPs noted that the Illinois Commission found that the transportation of calls to a single POI per LATA would have a de minimus incremental cost upon the ILEC.⁴¹

2. Issues Five through Nine

GNAPs argued that the terms of the ICA should be the sole determinant of the obligations between the parties and that it would be unfair to GNAPs to have to monitor VZ-RI's tariff filings.⁴² As for insurance requirements, GNAPs argued that the amount of insurance required by SBC in Illinois should be sufficient for VZ-RI.⁴³ Also, GNAPs opposed an audit clause because it does not want to disclose competitively sensitive information to VZ-RI.⁴⁴

VZ-RI's Rebuttal

1. Issues One through Four

VZ-RI strenuously opposed GNAPs' analysis that the incremental costs of transporting traffic to a single POI is de minimus.⁴⁵ VZ-RI argued that GNAPs'

³⁹ Lundquist's rebuttal testimony, pp. 2-3.

⁴⁰ *Id.*, pp. 5-7.

⁴¹ *Id.*, pp. 9, 13.

⁴² William Rooney's rebuttal testimony, pp. 2-4.

⁴³ *Id.*, pp. 6-7.

⁴⁴ *Id.*, pp. 10-11.

⁴⁵ Won Choe's rebuttal testimony, p. 2.

local calling area and VNXX proposals would undermine VZ-RI's toll and access charge regime but also increase VZ-RI's reciprocal compensation payments to GNAPs. Although VZ-RI concurs that GNAPs can assign telephone numbers to end users located outside the rate center to which those numbers are homed, VZ-RI argued that its proposed language would not alter the appropriate intercarrier compensation.⁴⁶

ARBITRATION HEARING

On September 27, 2002, a hearing was conducted at the offices of the Commission, 89 Jefferson Boulevard, Warwick. The following appearances were entered:

FOR GNAPS : James Scheltema, Esq.
 Craig Eaton, Esq.

FOR VERIZON: Keefe Clemons, Esq.
 Kimberly Newman, Esq.
 Thomas Singher, Esq.

By agreement of the parties, the parties limited their testimony and cross-examination to issues one through four. At the hearing, Mr. Scott Lundquist testified on behalf of GNAPs. Mr. Lundquist stated that although VZ-RI has acknowledged that GNAPs can have a single POI within a LATA, VZ-RI's proposal to establish VGRIP is unacceptable because VZ-RI is trying to shift the financial responsibility for its transport to the CLEC.⁴⁷

Under cross-examination, Mr. Lundquist admitted that the NYPSC adopted VZ's contract language for issue one, which relates to implementation of

⁴⁶ Terry Wayne's rebuttal testimony, p. 2.

⁴⁷ Tr. 9/27/02 pp. 11-13.

the federal policy of allowing a CLEC to have a single POI per LATA.⁴⁸ Under redirect examination, Mr. Lundquist stated that VZ-RI has control over the physical characteristics of the route design or its costs before the call is physically handed to GNAPs at its POI in Providence. Thus, Mr. Lundquist asserted that GNAPs should not be financially responsible for transporting VZ-RI's originated traffic prior to reaching GNAPs' POI because it has no control over the physical characteristics over the route that VZ-RI transports the traffic.⁴⁹ Also, Mr. Lundquist noted that the FCC is presently considering the issue of a carrier being responsible for the cost of carrying originating calls on its own network. In addition, Mr. Lundquist was unable to testify regarding the contract language proposed by GNAPs for the first issue.⁵⁰

At the hearing, Mr. Peter D'Amico testified on behalf of VZ-RI. Mr. D'Amico stated that the focus of issues one and two is VZ-RI's proposal, VGRIP, which differentiates between the physical POI and a financial point where the cost of transport shifts from the originating party.⁵¹ Under cross-examination, Mr. D'Amico acknowledged that GNAPs takes physical responsibility for the call at the POI and stated that, hypothetically, a POI in the center of a LATA would minimize VZ-RI's transport costs under GNAPs' proposal for issue two. In addition, Mr. D'Amico admitted that GNAPs' proposal for the responsibility of transport costs is the current situation for Rhode Island.⁵² Counsel for GNAPs asserted that the policy that each carrier bears its own

⁴⁸ *Id.*, p. 32.

⁴⁹ *Id.* pp. 63-64.

⁵⁰ *Id.* pp. 80-82.

⁵¹ *Id.* pp. 86, 88-90.

⁵² *Id.* pp. 99, 122-125.

transport costs on its side of the POI derives from the FCC. Counsel for VZ-RI acknowledged that the FCC has placed financial burdens and obligations upon ILECs that the CLEC is not required to accept.⁵³

Mr. Won Choe testified on behalf of VZ-RI. Mr. Choe stated that Mr. Lundquist's analysis for determining the cost of transport for originating traffic was flawed because Mr. Lundquist used common transport instead of dedicated transport.⁵⁴

Mr. Lundquist testified again for GNAPs. Mr. Lundquist stated that GNAPs should not be required to use VZ-RI's local calling areas for wholesale purposes such as determining reciprocal compensation and access/toll charges. Also, Mr. Lundquist stated that VNXXs will assist ISP customers in avoiding toll charges.⁵⁵

Under cross-examination, Mr. Lundquist acknowledged that prior to the Act, the NYPSC had decided that any traffic terminating within a LATA would be subject to reciprocal compensation and not to access charges.⁵⁶ Under cross-examination, Mr. Lundquist admitted that GNAPs also wants VNXX calls to receive reciprocal compensation.⁵⁷ Also, Mr. Lundquist concurred that an FX service customer pays a Commission approved tariff rate for having a toll call deemed local.⁵⁸ Mr. Lundquist acknowledged that the elimination of VZ-RI's local calling areas for wholesale purposes would have significant financial implications to VZ-RI. He acknowledged that the Florida Commission

⁵³ Id. pp. 132-133.

⁵⁴ Id. pp. 160-161.

⁵⁵ Id. pp. 163-166.

⁵⁶ Id. pp. 173-174.

⁵⁷ Id. pp. 175-176.

eliminated the use of the ILEC's local calling areas for wholesale purposes in a generic docket rather than in an arbitration proceeding.⁵⁹ Counsel for GNAPs admitted that in Rhode Island, GNAPs is primarily an ISP CLEC.⁶⁰

Mr. Terry Haynes testified on behalf of VZ-RI. Mr. Haynes stated that adopting GNAPs' position on issue three would be a sweeping decision and would financially harm VZ-RI. As for issue four, Mr. Haynes stated that adoption of GNAPs' position would result in long distance calls being treated as local calls for intercarrier compensation.⁶¹ Under cross-examination, Mr. Haynes stated that the Commission should adopt VZ-RI's position on issues three and four or, in the alternative, open a generic docket.⁶² Mr. Haynes acknowledged that in New York there are many retail local calling areas in a LATA but wholesale intercarrier compensation is done on a LATA-wide basis.⁶³ Mr. Haynes stated that the adoption of GNAPs' position on issues three and four would harm VZ-RI's ability to provide lifeline service and universal service because it would deprive VZ-RI of necessary revenue to provide phone service at affordable prices.⁶⁴ Regarding VNXX, VZ-RI stated that GNAPs can have VNXX as long as GNAPs does not receive reciprocal compensation for non-local calls and VZ-RI receives access charges for non-local toll calls.⁶⁵

⁵⁸ Id. pp. 188-189.

⁵⁹ Id. pp. 209-212.

⁶⁰ Id. p. 221.

⁶¹ Id. pp. 227-229.

⁶² Id. pp. 234-235.

⁶³ Id., pp. 239-240.

⁶⁴ Id., pp. 242-243.

⁶⁵ Id., p. 269.

POST-HEARING BRIEF OF GNAPs

GNAPs argued that federal law prohibits VZ-RI from imposing originating charges on GNAPs for calls made by VZ-RI customers. Specifically, GNAPs stated that FCC Rule 703 forbids VZ-RI from imposing originating charges on GNAPs for VZ-RI originated traffic. In addition, GNAPs argued that the imposition of origination charges would place additional costs on CLECs which could result in the elimination of many CLECs and give VZ-RI a competitive advantage.⁶⁶

In regard to VNXX, GNAPs argued that federal law, specifically FCC Rule 703, deems VNXX traffic to be subject to reciprocal compensation and that VZ-RI cannot impose access charges upon it. GNAPs argued that VNXX traffic is identical to FX traffic because it will allow a customer to call outside his local calling area without automatically being charged for toll charges. If VZ-RI loses toll revenue from VNXX, GNAPs argued, VZ-RI could adjust its prices to minimize its losses. Also, GNAPs stated that VNXX will allow CLECs to erode VZ-RI's market dominance of the intrastate toll market.⁶⁷

As for VZ-RI imposing access charges on GNAPs, GNAPs argued that FCC Rule 703 prohibits any additional compensation other than reciprocal compensation for telecommunications traffic. Also, GNAPs stated that there is no economic or technical reason for local calling areas to be any smaller than a LATA but that a CLEC cannot offer a LATA-wide calling area if VZ-RI can impose access charges.⁶⁸

⁶⁶ GNAPs' petition, pp. 3-11.

⁶⁷ *Id.*, pp. 11-14.

⁶⁸ *Id.*, pp. 16-19.

As for the remaining issues, GNAPs stated that VZ-RI should be required to renegotiate specifically if the FCC's decision on ISP-bound traffic is modified or reversed. Regarding two-way trunking, GNAPs argued that each carrier should forecast the traffic that it believes will terminate on the other carrier's network. *Also*, GNAPs argued that VZ-RI should not be allowed to incorporate tariffs and other documents into the ICA because VZ-RI can make changes to tariffs. GNAPs indicated that its current commercial liability coverage is adequate and that VZ-RI has not shown any circumstances which have resulted in damages or injuries, committed by a CLEC, in excess of this amount. Finally, GNAPs opposed VZ-RI's requirement that GNAPs subject its records to an audit because GNAPs' information is competitively sensitive.⁶⁹

VZ-RI's POST HEARING BRIEF

At the outset, VZ-RI stated that GNAPs has not provided a basis or an explanation for many of GNAPs' proposed contract provisions and has not responded to VZ-RI's supplemental issues. Also, VZ-RI noted that GNAPs' proposals in many cases have been rejected in completed arbitrations by state commissions in California, New York, Ohio and Illinois.⁷⁰

On issue one, VZ-RI stated that parties are in agreement that GNAPs can physically interconnect with VZ-RI at a single POI per LATA on a technically feasible point on VZ-RI's network. According to VZ-RI, the disagreement is over the contract language used to implement this principle. VZ-RI argued for use of its contract language because GNAPs' proposal references the Network Interface

⁶⁹ *Id.*, pp. 20-23.

⁷⁰ VZ-RI's Brief, pp. 1-2.

Device (“NID”) and all four state commissions that have completed arbitrations between VZ and GNAPs have adopted VZ’s proposed contract language on this issue.⁷¹

On issue two, VZ-RI argued for adoption of its VGRIP proposal because it equitably allocates the costs associated with GNAPs’ selection of a single POI per LATA. VZ-RI explained that under VGRIP, GNAPs would have to establish an IP at VZ-RI’s tandem or in a local calling area, and GNAPs would take financial responsibility for delivery of the traffic at the IP. VZ-RI argued that the cost for the additional transport to GNAPs is not de minimis to VZ-RI and that GNAPs should have to pay for this additional transport cost because GNAPs traffic is almost exclusively from VZ to GNAPs.⁷² VZ-RI disputed GNAPs reliance on FCC Rule 703 as a basis for opposing VZ-RI’s VGRIP proposal. VZ-RI noted that ISP-bound traffic is not subject to FCC Rule 703. *Also*, VZ-RI noted that the FCC, in its order approving Verizon Pennsylvania’s ~~271~~ application, stated that GRIP, which is similar to VGRIP, does not fail to comply with the FCC’s existing rules. In support of its VGRIP proposal, VZ-RI noted that VGRIP was adopted by the Ohio Commission and in a pending decision by a South Carolina Commission arbitrator.⁷³

On issue three, VZ-RI opposed GNAPs’ proposal to define local calling areas for purposes of wholesale intercarrier compensation. VZ-RI argued that GNAPs’ proposal would abolish intraLATA access charges for toll calls and would have toll calls categorized as local calls so as to be subject to reciprocal

⁷¹ *Id.*, pp. 3-4.

⁷² *Id.*, pp. 4-9.

⁷³ *Id.*, pp. 10-13.

compensation. According to **VZ-RI**, GNAPs' proposal would be rate arbitrage because a CLEC would pay one low reciprocal compensation rate for a customer's outbound calls while collecting a much higher access rate for a customer's inbound calls. **Also**, **VZ-RI** indicated that GNAPs' proposal would significantly impact **VZ-RI's** financial compensation structure and its ability to satisfy its obligations as the carrier of last resort for Rhode Island. **VZ-RI** noted that nearly every state commission that has considered GNAPs' proposal has rejected it.⁷⁴

On issue four, **VZ-RI** opposed GNAPs proposal to have VNXXs treated as local calls for reciprocal compensation and to have VNXXs utilized to avoid access charges for toll calls. **VZ-RI** stated that GNAPs' proposal for VNXXs has the potential for a similar effect on **VZ-RI's** financial compensation structure as GNAPs' proposal for issue three. According to **VZ-RI**, GNAPs' proposal for issue four also could result in rate arbitrage. **VZ-RI** noted that an overwhelming majority of state commissions have determined that VNXXs are not a local call subject to reciprocal compensation. In addition, **VZ-RI** cited a number of decisions by various state commissions concluding that access charges should apply to VNXX traffic. **Also**, **VZ-RI** emphasized that a recent pending arbitration decision in South Carolina found that **VZ** has the ability to exclude VNXX traffic from intercarrier compensation. **VZ-RI** indicated that it presented testimony that it can do so in Rhode Island.⁷⁵

As for the remaining issues of five through twelve, **VZ-RI** noted that in the four final arbitration orders of California, New York, Ohio and Illinois, **VZ** won on

⁷⁴ *Id.*, pp. 14-18. **VZ-RI** stated that the Florida decision was a generic proceeding and that the parties do not agree as to the requirements of the order. *Id.*, pp. 13-14, *fn.* 40.

⁷⁵ *Id.*, pp. 19-24.

nearly every issue. *Also*, VZ-RI noted that on some of the issues of five through twelve, GNAPs failed to explain its contract proposals or provide evidence in support of adopting their proposals.⁷⁶

ARBITRATOR'S FINDINGS

ISSUES 1 & 2: POI AND VGRIP

The focus of the parties in this arbitration has been issues one through four. These first four issues revolve around intercarrier compensation.

For issue one, the parties were in agreement that federal law allows a CLEC to interconnect at a single technically feasible point on the ILEC's network. Essentially, under federal law, GNAPs can establish a single POI per LATA at a technically feasible point on VZ-RI's network. The dispute arose over what contract language should be utilized in the ICA to implement this federal law. VZ-RI provided a witness who could explain VZ-RI's proposed contract language for this issue. GNAPs' witness could not testify as to GNAPs' proposed contract language for issue one. At an arbitration proceeding each party has the burden of presenting evidence that explains and justifies its proposed contract provisions. GNAPs failed to meet its burden on issue one. In addition, I note that each of the four state commissions with final arbitration decisions between GNAPs and VZ (California, Illinois, New York and Ohio), have adopted VZ's proposed contract language for issue one. As a result, the adoption of VZ-RI's proposed language will further the objective of bringing uniformity to the wholesale aspect of telecommunications. This is consistent with prior Commission orders in which uniformity has been a consideration in wholesale performance standards and

⁷⁶ *Id.*, pp. 24-25.

penalties.⁷⁷ The application of this principle merely extends it to wholesale contract terms and conditions. Lastly, VZ-RI's proposed contract language appears clear and concise, unlike GNAPs' proposal which is confusing and references the NID. Accordingly, VZ-RI's position for issue one is adopted.

For issue two, VZ-RI's proposed VGFUP, a proposal which would dramatically shift transport costs from an ILEC to a CLEC. According to VZ-RI's own witness, in Rhode Island the originating carrier pays for the cost of transporting the call to the POI. As a result, ILECs such as VZ-RI must transport numerous calls at great distances because a CLEC is only required to have a single POI per LATA. VGRIP would allow a CLEC to have a single physical POI but would also allow VZ-RI to establish multiple IPs throughout the LATA where the financial responsibility for transport costs would shift from the originating carrier.

In reviewing a proposal that would dramatically alter an existing rule for intercarrier compensation between ILECs and CLECs, three steps should be followed. First, it must be determined whether the proposal is allowed under federal law. In 2001, the FCC stated that under its regulations, an ILEC can not charge other carriers for local traffic that originates on the ILEC's network.⁷⁸ This would suggest that VGRIP is not permissible under federal law. However, more recently the FCC determined that GRIP, which is very similar to VGRIP, does not violate the Act or the FCC's current regulations.⁷⁹ There are apparently some

⁷⁷ See e.g. Order No. 17109 (issued 8/20/02), p. 3; Order No. 17080 (issued 7/29/02) p.2; and Order No. 16809 (issued 12/3/01), p. 34.

⁷⁸ FCC Intercarrier Compensation NPRM, para. 112.

⁷⁹ FCC VZ-PA 271 Approval Order, para 100.

mixed messages from the FCC on this issue, but it seems that VGRIP could be permissible under federal law.

Second, it must be determined whether this proceeding is the appropriate forum to dramatically alter an existing rule for intercarrier compensation. **This** proceeding is an arbitration between two parties and, unlike a generic docket, does not include participation from either the Division of Public Utilities and Carriers (“Division”), which represents the ratepayers, or other CLECs. A decision on this issue could affect other CLECs when their ICAs expire. Also, the FCC is conducting a rulemaking proceeding on issues related to VGRIP.⁸⁰ Due to the fact that the FCC is conducting a rulemaking proceeding on this issue and resolution requires significant interpretation of federal law and expertise, **any** change in intercarrier compensation similar to VGRIP should be done by the FCC. In other words, the present policy should continue and VZ-RI’s VGRIP proposal is rejected.

Although VZ-RI’s VGRIP did not pass the second step of this analysis, the third step in the analysis requires a determination of whether the proposal is in the public interest.⁸¹ Under these circumstances, the public interest is the promotion of competition **or** at a minimum, the avoidance of impeding competition. Although any change in intercarrier compensation for originating traffic should come from the FCC and not from a state arbitration proceeding, VZ-RI failed to show that VGRIP would not significantly harm competition.

⁸⁰ FCC Inter-carrier Compensation NRPM, para 112-114.

⁸¹ Pursuant to Section 252(e)(2)(A)(ii), a state commission can consider the public interest in reviewing an ICA.

VGRIP could dramatically shift transport costs to CLECs while reducing VZ-RI's transport costs.

The local telecommunications market is still clearly dominated by ILECs while CLECs are still struggling to establish themselves. Certainly if VZ-RI could show that CLECs have established a foothold in the market and that VZ-RI is no longer the dominant local telephone carrier, a VGRIP proposal would not cause significant harm to competition. VZ-RI focused on portraying VGRIP as fair and equitable. In fact, VGRIP may be more fair and reasonable than the current situation but VZ-RI is well aware that in attempting to promote competition, the Act and the FCC's interpretation of it imposes burdens and obligations upon ILECs that are not imposed upon CLECs. Arguments for equity and fairness are the usual last resorts in arbitration proceedings. Unfortunately for VZ, the Act does not include an equal protection clause for ILECs.

VZ-RI has failed to show that VGRIP is in the public interest by either promoting or at least not harming competition. It comes as no surprise that many state commissions have rejected VGRIP. Rejection of VGRIP is also consistent with a prior Commission order in which the Commission indicated disinterest in GRIP.⁸² Accordingly, VZ-RI's proposal for VGRIP is rejected, and GNAPs' position for issue *two* is adopted.

⁸² See Order No. 16808 (issued 12/3/01). p. 17.

ISSUES 3 & 4: LOCAL CALLING AREAS AND VNXX

For issue three, the parties are in agreement that each party can define its own **local** calling area for its retail customers. The dispute is whether GNAPs can define its local calling area for purposes of wholesale intercarrier compensation. GNAPs' local calling area proposal would dramatically alter the present intercarrier compensation structure in Rhode Island, which is based on VZ-RI's local calling areas. If GNAPs' proposal is adopted, GNAPs could have VZ-RI pay it reciprocal compensation for toll calls while GNAPs could avoid paying VZ-RI access charges for toll calls.

As stated earlier, in reviewing a proposal that dramatically alters an existing rule for intercarrier compensation between ILECs and CLECs, three steps should be followed. The first step is to determine if the proposal is allowed under federal law. It is undisputed that state commissions have the authority to define local calling areas for retail customers and that the FCC has authorized state commissions to determine what local calling areas should be for purposes of intercarrier compensation.⁸³ Certainly a state commission can expand local calling areas. For instance, a state commission can expand the calling area to be LATA-wide. However, it may be contrary to federal law to define competing and inconsistent local calling areas for purposes of wholesale intercarrier compensation. It appears that the FCC has held that toll calls subject to access charges are not local calls subject to reciprocal compensation.⁸⁴ By allowing each CLEC to define its own local calling area for purposes of intercarrier

⁸³ FCC Local Telephony Order, para. 1035.

⁸⁴ FCC ISP Remand Order, para. 37, fn. 66.

compensation, a call made by a CLEC customer may be deemed a local call subject to reciprocal compensation while the same call made by an ILEC customer would be deemed a toll call subject to access charges. Accordingly, GNAPs' proposal seems to be contrary to federal law or, at a minimum, enter into a gray area of federal law. Federal law clearly allows a state commission to maintain its present local calling areas or to expand it uniformly for purposes of wholesale intercarrier compensation. However, competing and inconsistent local calling areas for wholesale intercarriers compensation may be inconsistent with federal law.

The second step of the analysis requires a determination of whether this proceeding is the appropriate forum for consideration of this issue. Defining local calling areas and the effect of changing local calling areas on the ILEC's financial ability to continue being the provider of last resort phone service and provider of universal service demonstrate that a state proceeding is an appropriate forum. Because a decision on GNAPs' proposal would have an impact on CLECs and on residential customers who reside in rural communities or who are low income, a generic docket with the participation of the Division and other CLECs would be much more appropriate for altering the existing local calling areas for wholesale intercarrier compensation.

Although GNAPs' local calling area proposal did not pass the second step of this analysis, the third step is to determine if GNAPs' proposal is in the public interest. GNAPs' local calling area proposal could affect universal service for rural and low income customers. Under these circumstances, the public interest reflects a balance between the promotion of competition with maintaining

universal service.⁸⁵ First, GNAPs' proposal will more likely promote rate arbitrage than competition. Under GNAPs' proposal, a **CLEC** can pay a **low** reciprocal compensation rate for its customer's outbound calls while collecting a much higher access rate for its customer's inbound calls. Second, GNAPs' proposal will bring greater administrative confusion to the competitive marketplace because there would be numerous calling areas being utilized to determine intercarrier compensation. Finally, it is undisputed that GNAPs' proposal could significantly impact VZ-RI's financial structure and therefore, impact VZ-RI's ability to satisfy its obligations as the carrier of last resort. The elimination of access charges for intraLATA tolls could undermine VZ-RI's ability to provide affordable phone service to rural and low income customers.

GNAPs has failed to show that its local calling area proposal is in the public interest. Not surprisingly, every state but one has rejected GNAPs' proposal. Only the Florida commission has gone against this trend. First, I would note that the Florida commission's order arose from a generic proceeding and not from an arbitration. Second, the order itself is rather ambiguous. The Florida commission ordered that the originating carrier's retail local calling area will be used as the default local calling area for purposes of reciprocal compensation.⁸⁶ Reciprocal compensation is only one aspect of intercarrier compensation, the other being access charges. In other words, the Florida

⁸⁵ Universal service is an appropriate consideration in an arbitration proceeding pursuant to Section 252 of the **Act**. Section 252(e)(3) and (f) state that the requirements of Section 252 are subject to Section 253. Section 253(b) allows state commissions to impose on a competitively neutral basis, consistent with Section 254, requirements necessary to preserve and advance universal service. Section 254(l) states that state commissions should ensure that universal service is available at rates that are just, reasonable and affordable.

⁸⁶ Florida Intercarrier Compensation Order, p. 55.

commission appears to be implicitly allowing ILECs to impose access charges on calls subject to reciprocal compensation. This ruling is not only confusing, but intellectually inconsistent and possibly contrary to federal law. Essentially, Florida has decided that a CLEC can receive reciprocal compensation for calls it deems local but that the ILEC could assess an access charge on the same call because it deems it to be a toll call. The Florida approach should not be adopted in Rhode Island. Rejection of GNAPs' local calling area proposal is consistent with past Commission orders in which local calling areas were expanded when it was apparent that the ILEC was overearning, thus avoiding an adverse impact on universal service.⁸⁷ Accordingly, GNAPs local calling area proposal is rejected and VZ-RI's position for issue three is adopted.⁸⁸

For issue four, the parties are in agreement that GNAPs can utilize VNXX. The dispute is whether GNAPs can have VNXX calls treated as local calls for purposes of wholesale intercarrier compensation. GNAPs' VNXX proposal would prevent VZ-RI from receiving access charges while allowing GNAPs to receive reciprocal compensation from VZ-RI for VNXX calls outside the local calling area. GNAPs' VNXX proposal is similar to its local calling area proposal in that it results in GNAPs receiving reciprocal compensation while preventing VZ-RI from receiving access charges for geographically non-local calls. GNAPs' VNXX proposal has the potential to dramatically alter the present intercarrier compensation structure in Rhode Island, but on a smaller scale than GNAPs' proposal for local calling areas. Utilizing the three step test utilized for issue

⁸⁷ See generally Order No. 16390 (issued 9/14/00), and Order No. 16015 (issued 10/15/99).

three, it is apparent that GNAPs' VNXX proposal will result in many of the same problems resulting from GNAPs' local calling area proposal.

First, it is unclear whether federal law permits VNXX calls to be deemed local calls for purposes of reciprocal compensation and to also avoid access charges. The FCC recently held that the jurisdictional nature **of** a call is determined by the geographic end points of the communication.⁸⁹ Utilizing this standard, GNAPs' VNXX calls **or** VZ's FX calls are not local calls subject to reciprocal compensation because the physical end points **of** the calls are not in the same local calling area. However, the FCC's Wireline Competition Bureau seems to have not utilized this standard.⁹⁰ Although it is logical to determine whether a call is local based on the call's actual geographic end points, federal **law** in this area is in a state of flux and will not be settled until the FCC's rulemaking proceeding on intercarrier compensation is concluded.

Second, this arbitration proceeding is not an appropriate forum for altering Rhode Island's intercarrier compensation structure **as** it relates to VNXX. As previously noted, the FCC has instituted a rulemaking on intercarrier compensation addressing VNXX.⁹¹ Thus, the FCC will address this federal issue. Also, GNAPs' NXX proposal could affect VZ-RI's ability to continue to provide universal service to rural and low income customers. Thus, if this commission were to act on this issue, it should do so in a generic docket which includes the Division and other CLECs.

⁸⁸ Assuming universal service considerations are not an appropriate consideration in a Section 252 proceeding, my findings against adoption of GNAPs' local calling area proposal would be based on the other reasons elaborated in my findings.

⁸⁹ FCC ISP Remand Order, para 56-59.

⁹⁰ FCC Wireline Bureau's Virginia Order, para. 288.

Third, GNAPs' VNXX proposal is not in the public interest because it encourages rate arbitrage and may undermine universal service. GNAPs' VNXX proposal will allow GNAPs to receive reciprocal compensation in some cases while allowing GNAPs to avoid paying access charges in other cases. Also, GNAPs' VNXX proposal could adversely impact VZ-RI's financial ability to satisfy its obligations as the carrier of last resort and providing affordable phone service to rural and low income customers. In addition, GNAPs' VNXX proposal could effectively increase a VZ-RI retail customer's local calling area because the VZ-RI customer could call a GNAPs VNXX customer without paying access charges. This development would further undermine VZ-RI's ability to obtain access charges for intraLATA calls. Essentially, GNAPs' VNXX proposal is similar to GNAPs local calling area proposal in regards to intraLATA toll calls except on a smaller scale.

GNAPS has failed to show that its VNXX proposal is in the public interest. As expected, an overwhelming number of state commissions have decided to deem VNXX calls as non-local calls not subject to reciprocal compensation **and** possibly subject to access charges. There are three exceptions which will be examined and explained.

New York has determined that VNXX calls are local and not subject to access charges within the same LATA. However, the basis for this decision was an order by the NYPSC arising from a generic docket that predated the **Act**.⁹² Furthermore, unlike Rhode Island, New York is a state with numerous LATAs

⁹¹ FCC Intercarrier Compensation NPRM, para. 115.

⁹² New York Interconnection Arrangement Order, p. 4, and New York Intercarrier Compensation Order, pp. 12-14.

and therefore, treating VNXX as local within a LATA presumably has less of a financial impact on VZ in New York than a similar policy on VZ implemented in single LATA Rhode Island.

In regard to the California arbitration decision, the California commission ordered an apparent compromise proposal based on an earlier order arising out of a generic docket. This compromise stated that a VNXX call will be treated **as** local if it originates within a certain geographic distance of the rate center, and rather than assessing access charges for non-local calls, the ILEC would receive transport costs based on TELRIC rates.⁹³ California is the only state with this unique intercarrier compensation structure for VNXX and, due to its complexity it should not be imported to Rhode Island.

Lastly, there is the FCC Wireline Bureau arbitration on behalf of the Virginia commission. The Wireline Bureau decided to treat VNXX traffic as local traffic.⁹⁴ However, as noted in a recent arbitration decision in South Carolina, the arbitrator stated that the Bureau never stated whether VNXX is subject to reciprocal compensation, but that VNXX should be treated as local traffic for billing purposes because VZ could not distinguish between VNXX from local traffic.⁹⁵ The vague ruling of the Wireline Bureau should not be applicable here. In particular, VZ-RI has presented evidence that it can distinguish between VNXX and other traffic for intercarrier compensation purposes.

The rejection of GNAPs' VNXX policy is not contrary to any prior order of this Commission. If GNAPs desires to provide VNXX in a manner comparable to

⁹³ California Final GNAPs Arbitration Order, pp. 25-29.

⁹⁴ FCC Wireline Bureau's Virginia Order, para 288.

⁹⁵ South Carolina GNAPs Arbitration, pp. 25-26.

VZ-RI's **FX** service it can do so in a manner that provides compensation to VZ-RI for access charges. In addition, VZ-RI should not be allowed to subject its FX calls to reciprocal compensation. Accordingly, GNAPs' VNXX proposal is rejected and VZ-RI's position for issue four is approved.⁹⁶

MISCELLANEOUS ISSUES FIVE THROUGH TWELVE

Since the parties gave less attention to issues five through twelve, my findings on these issues will be less detailed than what was provided in issues one through four. For issue five, GNAPs proposes to modify the change of law provision to give special treatment to ISP-bound traffic in the change of law provision. If the FCC or a court modifies the current intercarrier compensation structure, VZ-RI's changes of law provision will adequately address the change. A majority of states with final arbitration orders concurred with VZ on this issue.

This Commission has issued a multitude of orders relating to ISP-bound traffic.⁹⁷ I am not inclined to create a special clause for ISP-bound traffic in this ICA that may lead to more litigation before the Commission regarding ISP-bound traffic. ISP-bound traffic is a recurring phenomenon that never seems to die. ISP traffic-bound reminds one of a murderous fiend in horror movies popular with adolescents in the decade of the 1970s and **1980s**. No matter how many times you believe the movie's antagonist is dead, it somehow resurrects itself to horrify again and again in sequel after sequel. Accordingly, VZ-RI's position for issue five is adopted.

⁹⁶ Assuming universal service considerations are not an appropriate consideration in a Section 252 proceeding, my findings against adoption of GNAPs' VNXX proposal would be based on the other reasons elaborated in my findings.

⁹⁷ Order No. 17105 (issued 8/20/02), Order No. 16921 (issued 2/20/02), Order No. 16247 (issued 5/9/00), Order No. 16056 (issued 11/16/99), and Order No. 16056 (issued 7/21/99).

For issue six, the parties agree that GNAPs has the option of utilizing two-way trunking. The disagreement is over appropriate contract language to operationally implement two-way trunking. Similar to issue one, GNAPs provided very little if any evidence to support its proposed contract language. A majority of the states with final arbitration decisions have ruled in favor of VZ. Uniformity in wholesale terms and conditions will bring stability and certainty to the telecommunications market. Accordingly, VZ-RI's proposed position for issue six is adopted. The only exception is regarding the forecasting of traffic. Each party has the responsibility of forecasting its own traffic. It would be mere speculation to forecast another carrier's traffic. This approach is consistent with the findings of the Ohio Commission.

For issue seven, GNAPs' opposes VZ-RI's proposal to incorporate by reference other documents, such as tariffs, into the ICA. Incorporation by reference of other documents into a contract between two commercial entities is not uncommon. The documents VZ-RI ~~seeks~~ to incorporate will only supplement the ICA and not supplant it. If VZ-RI could not incorporate by reference these tariffs, the ICA would have to be expanded to specifically include portions of tariffs, or if there was a dispute, this Commission would likely review tariffs to determine the meaning of contract language. Tariffs can explain and supplement an ICA just as course of dealings or usage of trade can explain and supplement a contract for sale of goods.⁹⁸ In addition, the tariffs indicate the UNE prices. If there is a change in price, whether to GNAPs' advantage or disadvantage, the ICA should allow for the pricing change to be implemented. It is not clear GNAPs'

proposal would provide that flexibility. Also, tariff revisions are reviewed by the Division and can be opposed by CLECs prior to Commission approval. It is GNAPs' discretion to decide whether to monitor tariff revisions in Rhode Island. Accordingly, VZ-RI's position for issue seven is adopted with the exception of incorporation of the CLEC handbook into the ICA. Unlike a tariff, VZ can make changes to the CLEC handbook without prior Commission approval or input from CLECs. This approach is consistent with the decision of the Ohio Commission on this issue.

For issue eight, GNAPs opposes VZ-RI's proposed insurance requirements. Insurance is a cost of doing business. GNAPs assert that VZ-RI has not indicated any circumstances which has resulted damages or injuries in excess of GNAPs' current insurance. However, the purpose of insurance is to protect oneself from what may happen in the future and thus, what has not happened in the past is of minor significance. VZ-RI's proposed insurance requirements are within industry norms. In addition, insurance is even more important in light of the multitude of bankruptcies recently seen in the telecommunications industry. However, the insurance requirements VZ-RI is proposing to place on GNAPs should be applicable to itself as well. Although VZ-RI's circumstances may result in less of a need for the type of insurance requirements it proposes to place on GNAPs, it is important to avoid placing burdens on CLECs that would give VZ-RI a competitive advantage. Accordingly, VZ-RI's position for issue eight is adopted and is a requirement for VZ-RI as well.

⁹⁸ See UCC 2-202.

This approach is consistent with the decision of the Illinois Commission on this issue.

For issue nine, GNAPs opposed VZ-RI's proposed audit provisions. GNAPs claims that the proposed audit requirements would give VZ-RI unreasonably broad access to GNAPs' competitively sensitive records. Audit provisions are not common in commercial contracts, but an ICA between an ILEC and a CLEC is a relationship entered into by force of law and not by choice of the parties. Audit provisions in general are appropriate in a contract between competitors and standard practice in an ICA. Any audit will be performed by an independent CPA, and therefore VZ-RI would not have direct access to competitively sensitive information. A majority of state commissions with final arbitration decisions have ruled in favor of VZ on this issue and therefore, adopting VZ-RI's contract language will promote uniformity. If you have done no wrong, you should have no fear of any audit. Accordingly, VZ-RI's position on issue nine is adopted.

For issue ten, the parties agree VZ-RI can collocate at GNAPs' facilities. The disagreement is over contract language granting discretion to GNAPs **over** collocation arrangements with VZ-RI. At the outset, it is clear that federal law does not require GNAPs to allow VZ to collocate at GNAPs' facilities. VZ-RI argued that collocation at GNAPs' facilities should be allowed out **of** fairness to VZ-RI. Fairness is an amorphous abstract term. I am not inclined to create concrete obligations for the sake of fairness without a statutory basis; such activism is not my style. However, GNAPs conceded that VZ-RI can collocate at its facilities. More startling, GNAPs did not respond to VZ-RI's arguments during

the proceeding. The burden is on the parties to present their case, and GNAPs failed to present a case for issue ten. It is apparent that GNAPs **has** not vigorously contested VZ on this issue since a majority of states with final arbitration orders have found in favor of VZ on this issue. My duty is to adjudicate, not advocate for any party. Accordingly, VZ-RI's position on issue ten is adopted.

For issue eleven, the parties are in dispute over when a change of law becomes effective. GNAPs proposed that a change of law becomes effective only when all appeals are exhausted. It is disappointing to see this is an issue in this arbitration. This Commission has recently ruled that an order of a regulatory or judicial body is effective unless stayed, modified or vacated.⁹⁹ This is merely an attempt to raise a dead issue - ISP-bound traffic. Accordingly, VZ-RI's position on issue eleven is adopted.

For issue twelve, VZ-RI's proposed language to give VZ-RI the right to maintain its network at its discretion according to applicable law. GNAPs opposed VZ-RI's proposed language. During the proceeding, GNAPs made no attempt to argue against VZ-RI's proposed language or argue for its own proposed language. It is apparent that GNAPs followed a similar approach in other states because every state with a final arbitration decision has decided in favor of VZ on this issue. Adoption of VZ-RI's proposed language will promote uniformity. Accordingly, VZ-RI's position on issue twelve is adopted.

Accordingly, it is

(17193) ORDERED:

1. The parties shall draft and submit contract language consistent with all findings of this Arbitration Decision within fourteen days of issuance of this Arbitration Decision.
2. Requests for Clarification **of** this Arbitration Decision, specifically regarding contract provisions, shall be filed within seven days of issuance of this Arbitration Decision.

⁹⁹ See Order No. 17105 (issued 8/20/02).

3. Pursuant to Commission Rules Governing Arbitration of Interconnection Agreements, within fourteen days of issuance of this Arbitration Decision, parties may submit comments regarding this Arbitration Decision.
4. Pursuant to Commission Rules Governing Arbitration of Interconnection Agreements, within twenty-one days of issuance of this Arbitration Decision, parties may submit reply comments regarding this Arbitration Decision.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, ON
OCTOBER 16, 2002.

Steven Frias, Arbitrator